

FIRST REGULAR SESSION

SENATE BILL NO. 399

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CROWELL.

Read 1st time January 30, 2007, and ordered printed.

TERRY L. SPIELER, Secretary.

1830S.011

AN ACT

To repeal sections 160.261, 167.621, 167.624, and 190.092, RSMo, and to enact in lieu thereof four new sections relating to liability for school employees and volunteers, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 160.261, 167.621, 167.624, and 190.092, RSMo, are
2 repealed and four new sections enacted in lieu thereof, to be known as sections
3 160.261, 167.621, 167.624, and 190.092, to read as follows:

160.261. 1. The local board of education of each school district shall
2 clearly establish a written policy of discipline, including the district's
3 determination on the use of corporal punishment and the procedures in which
4 punishment will be applied. A written copy of the district's discipline policy and
5 corporal punishment procedures, if applicable, shall be provided to the pupil and
6 parent or legal guardian of every pupil enrolled in the district at the beginning
7 of each school year and also made available in the office of the superintendent of
8 such district, during normal business hours, for public inspection. All employees
9 of the district shall annually receive instruction related to the specific contents
10 of the policy of discipline and any interpretations necessary to implement the
11 provisions of the policy in the course of their duties, including but not limited to
12 approved methods of dealing with acts of school violence, disciplining students
13 with disabilities and instruction in the necessity and requirements for
14 confidentiality.

15 2. The policy shall require school administrators to report acts of school
16 violence to teachers and other school district employees with a need to know. For
17 the purposes of this chapter or chapter 167, RSMo, "need to know" is defined as

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

18 school personnel who are directly responsible for the student's education or who
19 otherwise interact with the student on a professional basis while acting within
20 the scope of their assigned duties. As used in this section, the phrase "act of
21 school violence" or "violent behavior" means the exertion of physical force by a
22 student with the intent to do serious physical injury as defined in subdivision (6)
23 of section 565.002, RSMo, to another person while on school property, including
24 a school bus in service on behalf of the district, or while involved in school
25 activities. The policy shall at a minimum require school administrators to report,
26 as soon as reasonably practical, to the appropriate law enforcement agency any
27 of the following felonies, or any act which if committed by an adult would be one
28 of the following felonies:

- 29 (1) First degree murder under section 565.020, RSMo;
- 30 (2) Second degree murder under section 565.021, RSMo;
- 31 (3) Kidnapping under section 565.110, RSMo;
- 32 (4) First degree assault under section 565.050, RSMo;
- 33 (5) Forcible rape under section 566.030, RSMo;
- 34 (6) Forcible sodomy under section 566.060, RSMo;
- 35 (7) Burglary in the first degree under section 569.160, RSMo;
- 36 (8) Burglary in the second degree under section 569.170, RSMo;
- 37 (9) Robbery in the first degree under section 569.020, RSMo;
- 38 (10) Distribution of drugs under section 195.211, RSMo;
- 39 (11) Distribution of drugs to a minor under section 195.212, RSMo;
- 40 (12) Arson in the first degree under section 569.040, RSMo;
- 41 (13) Voluntary manslaughter under section 565.023, RSMo;
- 42 (14) Involuntary manslaughter under section 565.024, RSMo;
- 43 (15) Second degree assault under section 565.060, RSMo;
- 44 (16) Sexual assault under section 566.040, RSMo;
- 45 (17) Felonious restraint under section 565.120, RSMo;
- 46 (18) Property damage in the first degree under section 569.100, RSMo;
- 47 (19) The possession of a weapon under chapter 571, RSMo;
- 48 (20) Child molestation in the first degree pursuant to section 566.067,
49 RSMo;
- 50 (21) Deviate sexual assault pursuant to section 566.070, RSMo;
- 51 (22) Sexual misconduct involving a child pursuant to section 566.083,
52 RSMo; or
- 53 (23) Sexual abuse pursuant to section 566.100, RSMo; committed on school

54 property, including but not limited to actions on any school bus in service on
55 behalf of the district or while involved in school activities. The policy shall
56 require that any portion of a student's individualized education program that is
57 related to demonstrated or potentially violent behavior shall be provided to any
58 teacher and other school district employees who are directly responsible for the
59 student's education or who otherwise interact with the student on an educational
60 basis while acting within the scope of their assigned duties. The policy shall also
61 contain the consequences of failure to obey standards of conduct set by the local
62 board of education, and the importance of the standards to the maintenance of an
63 atmosphere where orderly learning is possible and encouraged.

64 3. The policy shall provide that any student who is on suspension for any
65 of the offenses listed in subsection 2 of this section or any act of violence or
66 drug-related activity defined by school district policy as a serious violation of
67 school discipline pursuant to subsection 9 of this section shall have as a condition
68 of his or her suspension the requirement that such student is not allowed, while
69 on such suspension, to be within one thousand feet of any public school in the
70 school district where such student attended school unless:

71 (1) Such student is under the direct supervision of the student's parent,
72 legal guardian, or custodian;

73 (2) Such student is under the direct supervision of another adult
74 designated by the student's parent, legal guardian, or custodian, in advance, in
75 writing, to the principal of the school which suspended the student;

76 (3) Such student is in an alternative school that is located within one
77 thousand feet of a public school in the school district where such student attended
78 school; or

79 (4) Such student resides within one thousand feet of any public school in
80 the school district where such student attended school in which case such student
81 may be on the property of his or her residence without direct adult supervision.

82 4. Any student who violates the condition of suspension required pursuant
83 to subsection 3 of this section may be subject to expulsion or further suspension
84 pursuant to the provisions of sections 167.161, 167.164, and 167.171, RSMo. In
85 making this determination consideration shall be given to whether the student
86 poses a threat to the safety of any child or school employee and whether such
87 student's unsupervised presence within one thousand feet of the school is
88 disruptive to the educational process or undermines the effectiveness of the
89 school's disciplinary policy. Removal of any pupil who is a student with a

90 disability is subject to state and federal procedural rights.

91 5. The policy shall provide for a suspension for a period of not less than
92 one year, or expulsion, for a student who is determined to have brought a weapon
93 to school, including but not limited to the school playground or the school parking
94 lot, brought a weapon on a school bus or brought a weapon to a school activity
95 whether on or off of the school property in violation of district policy, except that:

96 (1) The superintendent or, in a school district with no high school, the
97 principal of the school which such child attends may modify such suspension on
98 a case-by-case basis; and

99 (2) This section shall not prevent the school district from providing
100 educational services in an alternative setting to a student suspended under the
101 provisions of this section.

102 6. For the purpose of this section, the term "weapon" shall mean a firearm
103 as defined under 18 U.S.C. 921 and the following items, as defined in section
104 571.010, RSMo: a blackjack, a concealable firearm, an explosive weapon, a
105 firearm, a firearm silencer, a gas gun, a knife, knuckles, a machine gun, a
106 projectile weapon, a rifle, a shotgun, a spring gun or a switchblade knife; except
107 that this section shall not be construed to prohibit a school board from adopting
108 a policy to allow a Civil War reenactor to carry a Civil War era weapon on school
109 property for educational purposes so long as the firearm is unloaded. The local
110 board of education shall define weapon in the discipline policy. Such definition
111 shall include the weapons defined in this subsection but may also include other
112 weapons.

113 7. All school district personnel responsible for the care and supervision
114 of students are authorized to hold every pupil strictly accountable for any
115 disorderly conduct in school or on any property of the school, on any school bus
116 going to or returning from school, during school-sponsored activities, or during
117 intermission or recess periods.

118 8. Teachers and other authorized district personnel in public schools
119 responsible for the care, supervision, and discipline of schoolchildren, including
120 volunteers selected with reasonable care by the school district, shall not be civilly
121 liable when acting in conformity with the established [policy of discipline]
122 **policies** developed by each board [under this section], **including but not**
123 **limited to policies of student discipline** or when reporting to his or her
124 supervisor or other person as mandated by state law acts of school violence or
125 threatened acts of school violence, within the course and scope of the duties of the

126 teacher, authorized district personnel or volunteer, when such individual is acting
127 in conformity with the established policies developed by the board. Nothing in
128 this section shall be construed to create a new cause of action against such school
129 district, or to relieve the school district from liability for the negligent acts of
130 such persons.

131 9. Each school board shall define in its discipline policy acts of violence
132 and any other acts that constitute a serious violation of that policy. Acts of
133 violence as defined by school boards shall include but not be limited to exertion
134 of physical force by a student with the intent to do serious bodily harm to another
135 person while on school property, including a school bus in service on behalf of the
136 district, or while involved in school activities. School districts shall for each
137 student enrolled in the school district compile and maintain records of any
138 serious violation of the district's discipline policy. Such records shall be made
139 available to teachers and other school district employees with a need to know
140 while acting within the scope of their assigned duties, and shall be provided as
141 required in section 167.020, RSMo, to any school district in which the student
142 subsequently attempts to enroll.

143 10. Spanking, when administered by certificated personnel of a school
144 district in a reasonable manner in accordance with the local board of education's
145 written policy of discipline, is not abuse within the meaning of chapter 210,
146 RSMo. The provisions of sections 210.110 to 210.165, RSMo, notwithstanding, the
147 division of family services shall not have jurisdiction over or investigate any
148 report of alleged child abuse arising out of or related to any spanking
149 administered in a reasonable manner by any certificated school personnel
150 pursuant to a written policy of discipline established by the board of education
151 of the school district. Upon receipt of any reports of child abuse by the division
152 of family services pursuant to sections 210.110 to 210.165, RSMo, which allegedly
153 involves personnel of a school district, the division of family services shall notify
154 the superintendent of schools of the district or, if the person named in the alleged
155 incident is the superintendent of schools, the president of the school board of the
156 school district where the alleged incident occurred. If, after an initial
157 investigation, the superintendent of schools or the president of the school board
158 finds that the report involves an alleged incident of child abuse other than the
159 administration of a spanking by certificated school personnel pursuant to a
160 written policy of discipline or a report made for the sole purpose of harassing a
161 public school employee, the superintendent of schools or the president of the

162 school board shall immediately refer the matter back to the division of family
163 services and take no further action. In all matters referred back to the division
164 of family services, the division of family services shall treat the report in the
165 same manner as other reports of alleged child abuse received by the division. If
166 the report pertains to an alleged incident which arose out of or is related to a
167 spanking administered by certificated personnel of a school district pursuant to
168 a written policy of discipline or a report made for the sole purpose of harassing
169 a public school employee, a notification of the reported child abuse shall be sent
170 by the superintendent of schools or the president of the school board to the
171 juvenile officer of the county in which the alleged incident occurred. The report
172 shall be jointly investigated by the juvenile officer or a law enforcement officer
173 designated by the juvenile officer and the superintendent of schools or, if the
174 subject of the report is the superintendent of schools, by the juvenile officer or a
175 law enforcement officer designated by the juvenile officer and the president of the
176 school board or such president's designee. The investigation shall begin no later
177 than forty-eight hours after notification from the division of family services is
178 received, and shall consist of, but need not be limited to, interviewing and
179 recording statements of the child and the child's parents or guardian within two
180 working days after the start of the investigation, of the school district personnel
181 allegedly involved in the report, and of any witnesses to the alleged incident. The
182 juvenile officer or a law enforcement officer designated by the juvenile officer and
183 the investigating school district personnel shall issue separate reports of their
184 findings and recommendations after the conclusion of the investigation to the
185 school board of the school district within seven days after receiving notice from
186 the division of family services. The reports shall contain a statement of
187 conclusion as to whether the report of alleged child abuse is substantiated or is
188 unsubstantiated. The school board shall consider the separate reports and shall
189 issue its findings and conclusions and the action to be taken, if any, within seven
190 days after receiving the last of the two reports. The findings and conclusions
191 shall be made in substantially the following form:

192 (1) The report of the alleged child abuse is unsubstantiated. The juvenile
193 officer or a law enforcement officer designated by the juvenile officer and the
194 investigating school board personnel agree that the evidence shows that no abuse
195 occurred;

196 (2) The report of the alleged child abuse is substantiated. The juvenile
197 officer or a law enforcement officer designated by the juvenile officer and the

198 investigating school district personnel agree that the evidence is sufficient to
199 support a finding that the alleged incident of child abuse did occur;

200 (3) The issue involved in the alleged incident of child abuse is
201 unresolved. The juvenile officer or a law enforcement officer designated by the
202 juvenile officer and the investigating school personnel are unable to agree on
203 their findings and conclusions on the alleged incident.

204 11. The findings and conclusions of the school board shall be sent to the
205 division of family services. If the findings and conclusions of the school board are
206 that the report of the alleged child abuse is unsubstantiated, the investigation
207 shall be terminated, the case closed, and no record shall be entered in the
208 division of family services' central registry. If the findings and conclusions of the
209 school board are that the report of the alleged child abuse is substantiated, the
210 division of family services shall report the incident to the prosecuting attorney
211 of the appropriate county along with the findings and conclusions of the school
212 district and shall include the information in the division's central registry. If the
213 findings and conclusions of the school board are that the issue involved in the
214 alleged incident of child abuse is unresolved, the division of family services shall
215 report the incident to the prosecuting attorney of the appropriate county along
216 with the findings and conclusions of the school board, however, the incident and
217 the names of the parties allegedly involved shall not be entered into the central
218 registry of the division of family services unless and until the alleged child abuse
219 is substantiated by a court of competent jurisdiction.

220 12. Any superintendent of schools, president of a school board or such
221 person's designee or juvenile officer who knowingly falsifies any report of any
222 matter pursuant to this section or who knowingly withholds any information
223 relative to any investigation or report pursuant to this section is guilty of a class
224 A misdemeanor.

225 13. In order to ensure the safety of all students, should a student be
226 expelled for bringing a weapon to school, violent behavior, or for an act of school
227 violence, that student shall not, for the purposes of the accreditation process of
228 the Missouri school improvement plan, be considered a dropout or be included in
229 the calculation of that district's educational persistence ratio.

167.621. 1. Persons providing health services under sections 167.600 to
2 167.621 shall obtain authorization from a parent or guardian of the child before
3 providing services as provided by section 431.061, RSMo.

4 2. No employee of any school district may be required to administer

5 medication or medical services for which the employee is not qualified according
6 to standard medical practices. No **unqualified** employee who refuses to [violate
7 this provision] **administer medication or medical services** shall be subject
8 to any disciplinary action for such refusal. Nothing herein shall be construed to
9 prevent any employee from providing routine first aid, provided that any
10 employee shall be held harmless **and immune** from any liability if such
11 employee is following a proper procedure adopted by the local school board.

12 **3. A school district may require an employee to obtain the**
13 **necessary training to become qualified to administer medication or**
14 **medical services according to standard medical practice. Any qualified**
15 **employee shall be held harmless and immune from any civil liability for**
16 **administering medication or medical services in good faith and**
17 **according to standard medical practices.**

167.624. Each school board in the state, if the school district does not
2 presently have a program as described below, may develop and implement a
3 program to train the students **and employees** of the district in the
4 administration of cardiopulmonary resuscitation and other lifesaving methods,
5 as they determine best, and may consult the department of public safety, the
6 state fire marshal's office, the local fire protection authorities, and others as the
7 board sees fit. The board may make completion of the program a requirement for
8 graduation **or a condition of employment. Any trained employee shall be**
9 **held harmless and immune from any civil liability for administering**
10 **cardiopulmonary resuscitation and other lifesaving methods in good**
11 **faith.**

190.092. 1. A person or entity who acquires an automated external
2 defibrillator shall ensure that:

3 (1) Expected defibrillator users receive training by the American Red
4 Cross or American Heart Association in cardiopulmonary resuscitation and the
5 use of automated external defibrillators, or an equivalent nationally recognized
6 course in defibrillator use and cardiopulmonary resuscitation;

7 (2) The defibrillator is maintained and tested according to the
8 manufacturer's operational guidelines;

9 (3) Any person who renders emergency care or treatment on a person in
10 cardiac arrest by using an automated external defibrillator activates the
11 emergency medical services system as soon as possible; and

12 (4) Any person or entity that owns an automated external defibrillator

13 that is for use outside of a health care facility shall have a physician review and
14 approve the clinical protocol for the use of the defibrillator, review and advise
15 regarding the training and skill maintenance of the intended users of the
16 defibrillator and assure proper review of all situations when the defibrillator is
17 used to render emergency care.

18 2. Any person or entity who acquires an automated external defibrillator
19 shall notify the emergency communications district or the ambulance dispatch
20 center of the primary provider of emergency medical services where the
21 automated external defibrillator is to be located.

22 3. Any person who has had appropriate training, including a course in
23 cardiopulmonary resuscitation, has demonstrated a proficiency in the use of an
24 automated external defibrillator, and who gratuitously and in good faith renders
25 emergency care when medically appropriate by use of or provision of an
26 automated external defibrillator, without objection of the injured victim or victims
27 thereof, shall [not be held liable for any civil damages] **be held harmless and**
28 **immune from civil liability** as a result of such care or treatment, where the
29 person acts as an ordinarily reasonable, prudent person would have acted under
30 the same or similar circumstances. The person or entity who provides
31 appropriate training to the person using an automated external defibrillator, the
32 person or entity responsible for the site where the automated external
33 defibrillator is located, and the licensed physician who reviews and approves the
34 clinical protocol shall likewise not be held liable for civil damages resulting from
35 the use of an automated external defibrillator, provided that all other
36 requirements of this section have been met. [Nothing in this section shall affect
37 any claims brought pursuant to chapter 537 or 538, RSMo.]

38 4. The provisions of this section shall apply in all counties within the
39 state and any city not within a county.

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